Filed 9/26/16 Marriage of Nears CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of KENNARD T. NEARS and VICKIE L. NEARS.	
KENNARD T. NEARS, Respondent, v. VICKIE L. NEARS, Appellant.	F072452 (Super. Ct. No. 0394894) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Fresno County. Rosemary McGuire, Judge.

Vickie L. Nears, in propria persona, for Appellant.

No appearance for Respondent.

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[*] Before Peña, Acting P.J., Smith, J. and McCabe, J. [†]

[†] Judge of the Merced Superior Court assigned by the Chief Justice pursuant to article IV, section 6 of the California Constitution.

We are charged with deciding an appeal with an inadequate record, which makes it impossible to address the merits of this appeal. Vickie L. Nears appeals from an order denying her motion to set aside the 1989 judgment dissolving her marriage to Kennard T. Nears. Vickie asserts the family court erred in denying her motion because the 1989 judgment was obtained through fraud, as she never received a summons and complaint, Kennard forged her signature on the petition, and the address listed for her on the petition was not her address. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On January 27, 1989, Kennard filed a joint petition for summary dissolution of his marriage to Vickie. The petition stated the couple, who were married in 1986, had no minor children, there were no community assets or liabilities, and each relinquished their right to spousal support from the other. Kennard's mailing address was listed as a post office box in Fresno, while Vickie's mailing address was listed as 1820 Pennebaker #238, Manteca, CA 95336.

In September 1989, a judgment was returned unsigned because both parties needed to file a change of address "per the clerk's office." On November 17, 1989, Kennard signed a request that final judgment of dissolution of marriage be entered immediately, which the court signed on November 28, 1989, and filed on December 1, 1989. The clerk served notice of entry of the final judgment on the parties on December 1, 1989, at the same addresses listed on the petition.

In 2015, Vickie apparently filed a motion to set aside the 1989 judgment. Neither the motion, nor a responsive declaration that Kennard filed, are in the clerk's transcript, although the documents are identified in the register of actions. A hearing on the motion was held on September 22, 2015, and a minute order was entered the same day. The court found the motion was untimely, since the judgment was 26 years old, and that Vickie had remarried two or three times since 1989, after the judgment was filed. Accordingly, the court denied the motion to set aside the judgment.

DISCUSSION

Vickie contends the case should be reversed because the 1989 judgment was obtained through fraud. As a court of review, we are bound by the rule of appellate procedure that the order of the lower court is presumed correct and an appellant challenging that order must overcome the presumption by affirmatively demonstrating prejudicial error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) An appellant—even a self-represented litigant—cannot carry this burden unless he or she provides the appellate court with an adequate record of the lower court's proceedings. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247 [appellant representing self on appeal must follow rules of procedure].)

If the record is inadequate for meaningful review, the appellant defaults and the trial court's decision should be affirmed. (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416; see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 [record lacked copies of motion and opposition; issue resolved against appellant due to inadequate record].) Thus, where the appellant fails to provide an adequate record as to any issue the appellant has raised on appeal, the issue must be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.)

We cannot review Vickie's claims of error because we do not have an adequate record to do so. With the exception of the September 22, 2015 order, Vickie did not designate for inclusion in the clerk's transcript any of the documents filed with the trial court pertaining to her motion. Without these documents, we are unable to determine what occurred below and the evidence that was presented to the trial court. In other words, Vickie's claims are not corroborated by the record, and the rules of appellate procedure do not authorize this court to accept an appellant's description of what happened as accurate unless that description is supported by citations to the record.

As a result of the inadequate record, Vickie has failed to carry her burden of establishing reversible error in connection with her claim that the 1989 judgment was obtained through forgery.

DISPOSITION

The September 22, 2015 order is affirmed. No costs are awarded.